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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-6105

ALVIN FREEDMAN,

Petitioner

versus

CAPTAIN PHILIP M. SLAVIN,
CAPTAIN WILLIAM F. VOGELEY,
CAPTAIN TURNER A. EVANS,
CAPTAIN PAUL A. GIACHETTI
CAPTAIN NORMAN J. GROEBL,
CAPTAIN JOHN T. LARSEN,
SS MORMACSEA, SS MORMACVEGA,
MOORE-McCORMACK LINES INC.,

Respondents

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITIONER'S APPLICATION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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MAY IT PLEASE THE COURT:

The petitioner's application for a writ of certiorari should be denied and the decisons of the lower courts should not be disturbed or modified in any respect. The district court, in a well-reasoned and sound opinion,

granted the motion of respondents to quash service of process and dismissed the complaint. The United States Court of Appeals for the Fifth Circuit concluded that the decision of the district court was sound in law, and, after placing the case on the summary calendar, the court affirmed the district court holding.

As will be shown hereafter, the decisions of the two courts below are correct and in no way call for or suggest a reason for this Court to grant a writ of certiorari.

STATEMENT OF THE FACTS

The petitioner filed suit against the masters of vessels upon which he served and his former employer to recover damages for an alleged failure to feed him during the years 1968, 1969, 1972, 1973, and 1974. Suit was filed in the United States District Court for the Eastern District of Louisiana, a state and district where the individual respondents do not live, where the corporate respondent is not authorized to do and is not doing business, and where the alleged acts did not take place. Furthermore, the petitioner never signed on or off the vessels involved in the State of Louisiana and the state has no relationship to the case because petitioner never visited the State of Louisiana or any of its ports while working aboard the vessels.

THE DECISIONS OF THE DISTRICT COURT AND OF THE COURT OF APPEALS QUASHING SERVICE OF PROCESS AND DISMISSING THE SUIT FOR WANT OF JURISDICTION WERE CORRECT AND THE WRIT OF CERTIORARI SHOULD BE DENIED

A seaman must file a complaint in a district where he can obtain service of process and jurisdiction. In the

instant case, the individual respondents live and reside outside of Louisiana and none were served or could be served within the state. While service was attempted on them, as a unit and individually, all attempts originated from a district and state where they do not reside and never have resided. *Blank v. Bitker*, 135 F.(2d) 962 (7 Cir. 1943); *Tart v. Hudgins*, 58 F.R.D. 116 (MDNC 1972).

In order to obtain service of process on the corporate respondent, a foreign corporation, it was necessary to use one of Louisiana's substituted service statutes and to have certain minimum contacts with Louisiana to require jurisdiction and satisfy the "due process" requirements as enumerated in *International Shoe Co. v. State of Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.Ed. 95 (1945) and *Magee v. International Life Insurance Co.*, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed. (2d) 223 (1957). It was, therefore, necessary that the cause of action arise from, result from, grow out of, or be connected with activities of the defendant within the state. *Bergeron v. Sabine Dredging & Construction Co.*, 381 F.Supp. 223 (WDLa. 1968). In the instant case, the corporate respondent did not and does not do business in the State of Louisiana and the allegations claimed in the complaint had nothing whatever to do with Louisiana. Since respondents did not do business in Louisiana, and since all attempts at service of process were legally insufficient, the district court correctly quashed service of process and dismissed for lack of jurisdiction.

CONCLUSION

The application for a writ of certiorari should be denied. The holding and judgments of the lower courts

are in every respect sound, consistent with the decisions of this Honorable Court, and in no way in conflict with the decisions of the Court of Appeals.

Respectfully submitted:

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Of Counsel

CERTIFICATE

I hereby certify that copies of the above and foregoing brief in opposition to petitioner's application for a writ of certiorari have been served upon petitioner by depositing same in the United States mails, postage prepaid, and properly addressed to him at his address of record.

New Orleans, Louisiana, ..., 1975.

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William E. Wright